



Testimony

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Information, and Technology Committee on Government
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FEDERAL ADVISORY COMMITTEE ACT

Overview of Advisory Committees Since 1993

Statement of L. Nye Stevens
Director, Federal Management and Workforce Issues
General Government Division



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Federal Advisory Committee Act: Overview of Advisory Committees Since 1993

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our work on federal advisory committees. Congress has recognized that when properly organized and managed, advisory committees can provide a useful source of expertise and advice. However, in 1972, because of its concern about the proliferation and lack of effective management of advisory committees, Congress enacted the Federal Advisory Committee Act (FACA). FACA is intended to keep the number of advisory committees to the minimum necessary by ensuring that (1) valid needs exist for establishing and continuing advisory committees, (2) the committees are properly managed and their proceedings are open to the public, and (3) Congress is kept informed of their activities. FACA directs the General Services Administration (GSA) to establish and maintain a Committee Management Secretariat to oversee advisory committee activities. In 1993, the President issued an executive order that directed agencies to reduce by at least one-third the number of discretionary advisory committees that they sponsored (those not mandated by Congress or established by the President) by the end of fiscal year 1993. FACA committees are either established under agency authority, authorized by Congress, mandated by Congress, or established by the President.

As agreed, we will focus our testimony today on (1) an assessment of whether Executive Order 12838, signed by the President on February 10, 1993, achieved its goal of reducing the number of discretionary advisory committees by at least one-third by the end of fiscal year 1993 and the extent to which the costs and number of committee members changed during the same period; and (2) an overview of GSA's oversight responsibilities under FACA. Also as agreed, we will continue our work on GSA's oversight of advisory committee activities and additional issues that you and Senator John Glenn asked us to review—advisory committee management, committee members' independence, and participation of outside parties. We will report on this work at a later date.

To assess whether the administration achieved its goal of reducing the number of discretionary advisory committees and the extent to which committees' costs and membership had changed, we analyzed the annual reports of the President on federal advisory committees from fiscal years 1993 through 1996 and reviewed GSA historical data. To identify GSA's Committee Management Secretariat oversight responsibilities under FACA, we reviewed applicable laws, regulations, and GSA guidance to agencies

regarding advisory committee activities and interviewed GSA's Committee Management Secretariat officials.

Number of Advisory Committees Has Declined, but the Costs and Number of Members Per Committee Have Risen

According to the President's annual reports on advisory committees, the total number of advisory committees decreased from a high of 1,305 during 1993 to a low of 1,000 during 1996, the most recent year for which complete data were available. Nearly all of this reduction, 303 of the 305 drop, was due to cuts in the number of discretionary advisory committees. The reduction in the number of advisory committees since 1993 follows the President's 1993 executive order, which called for at least a one-third reduction in discretionary advisory committees. Discretionary committees do not include advisory committees mandated by Congress and those created by the President. Appendix I shows the number of advisory committees by the four establishment authorities during fiscal years 1993 through 1996.

The Office of Management and Budget (OMB), in providing guidance to agencies on the 1993 executive order, established a maximum ceiling number of discretionary advisory committees for each agency and a monitoring plan. Under the guidance, agencies were to report their committee levels annually to OMB and request its approval before creating any new discretionary committees. Later, OMB dropped the requirement for prior approval of new committees as long as agencies were beneath their approved ceilings. In a June 1994 memorandum to agency heads, the Vice President called for each agency to reduce advisory committee costs by at least another 5 percent beyond the savings achieved by the one-third reduction that resulted from implementation of the executive order.

According to GSA officials, and as reported in the President's annual reports, the overall number of advisory committees was on the rise before 1993, but in response to the 1993 executive order the number started to drop in 1994. (See app. II.) Almost all of the reduction in advisory committees (303 of 305) from fiscal year 1993 to 1996 was attributable to the cut in discretionary committees. Although the President's goal of reducing the number of discretionary committees by one-third was not achieved governmentwide by the end of fiscal year 1993,¹ the number of discretionary committees dropped from 833 to 530 (36 percent) during the 4-year period; and the total number of advisory committees dropped from 1,305 to 1,000 (23 percent). The 530 discretionary committees that existed

¹The fiscal year 1993 Annual Report of the President on Federal Advisory Committees shows that 28 of 64 (44 percent) executive departments, independent agencies, and other organizations either met or exceeded the one-third reduction.

during fiscal year 1996 were 4 less than the governmentwide OMB ceiling of 534 committees. According to GSA, the number of discretionary committees has continued to decline; and, as of mid-September 1997, the number was 479, 55 below the ceiling.

Although the overall number of advisory committees declined during the 4-year period, their costs and the number of committee members increased. The number of members serving on the committees increased from 28,317 to 29,511 (4 percent), and the costs of committees increased in nominal dollars from \$143.9 to \$148.5 million (3 percent). However, in constant 1993 dollars, the costs decreased from \$143.9 to \$138.3 million (4 percent) for the 4-year period.

On average, the number of members per committee rose from 22 to 30, and the costs per committee rose from \$110,276 to \$148,519 from fiscal year 1993 to 1996. In constant 1993 dollars, the average costs per committee rose from \$110,276 to \$138,314 for the 4-year period. One possible explanation for part of the increase in per committee costs and members is mergers. According to a GSA report on the implementation of the 1993 executive order, agencies recommended 196 discretionary advisory committees for merger. Mergers would include moving some of the functions and members to existing or new committees, according to GSA Committee Management Secretariat officials.

Another possible explanation for some of the increase in costs is the increase in the number of advisory committee meetings. During the same 4-year period, the number of advisory committee meetings increased from 4,387 to 5,008 (14 percent).

Although the number of meetings has risen, the percentage of open meetings compared to the percentage that were closed and partially closed has declined—49 percent of meetings were open in 1993 compared to 44 percent in 1996. Advisory committee meetings can be closed to the public if specific administrative procedures and specific provisions of the Government in the Sunshine Act (5 U.S.C. 552b) are followed. These provisions provide for closed meetings to protect, for example, matters that need to be kept secret in the interest of national security or foreign policy, trade secrets, and information of a personal nature, the disclosure of which would constitute an invasion of privacy. We did not examine the appropriateness of the decisions to close or partially close the FACA meetings. Appendix III shows a breakdown of the number of open, closed, and partially closed meetings from fiscal year 1993 to 1996.

GSA's Committee Management Secretariat Oversight Role

Under FACA and GSA regulations implementing FACA, GSA's Committee Management Secretariat is responsible for

- consulting with agencies on new and reauthorized advisory committees to ensure that FACA requirements are met;
- making comprehensive annual reviews of each advisory committee and making recommendations to the President and to the agency head or Congress on any action the Secretariat deems necessary, including abolishing the committee or merging it with another committee;
- preparing the President's annual report to Congress on the activities, status, and changes in the composition of advisory committees; and
- ensuring that follow-up reports are prepared on the status of recommendations made by presidential advisory committees.

For fiscal year 1997, GSA's Committee Management Secretariat had a budget of \$645,000 and 8 employees.

Consultation on Advisory Committees

FACA and GSA regulations require that agencies consult with GSA before establishing new and reauthorized advisory committees. As part of this consultation, agencies are required to submit charters and justification letters, which must contain specific information. FACA outlines that agencies are to include 10 specific items in the charter, including the committee's objectives and scope of activities, the time period necessary to carry out its purpose, and the estimated annual staff years and costs. GSA regulations state that agencies must address three items in the justification letter, including why the committee is essential to conduct the agency's business, why the committee's functions cannot be performed by the agency or other means, and how the agency plans to attain balanced membership. GSA's role is to review agency proposals to establish advisory committees and determine whether FACA requirements are met. The regulations say that GSA is to review the proposals and notify the agency of its views within 15 days, if possible. However, GSA does not have the authority to stop the formation of an advisory committee.

GSA regulations also require that agencies publish a notice in the Federal Register when either new or reauthorized discretionary advisory committees are established. Committees mandated by Congress or established by the President are not required to issue such notices. New discretionary committee notices are required to address three of the specific items that must be contained in the charter and justification letter. These items include a description of the nature and purpose of the

committee, a discussion of the agency's plan to attain a fairly balanced membership, and a statement that the committee is necessary and in the public interest. Notices for reauthorized committees do not need to include these three items.

Comprehensive Annual Reviews

FACA requires GSA to make an annual comprehensive review of each advisory committee to determine whether it is carrying out its purpose, whether its responsibilities should be revised, and whether it should be abolished or merged with another committee. After completing the reviews, GSA is required to recommend to the President and to the agency head or Congress any actions GSA deems should be taken.

GSA regulations require that agencies prepare an annual report for each committee, including the agencies' recommendations for continuing, merging, or terminating committees. For continuing committees (not new or terminated), agencies are required to describe such things as how the committee accomplishes its purpose, the frequency of meetings and the reason for continuing the committee, and why it was necessary to have closed committee meetings if such meetings were held. The committee's annual reports also are to include the committee costs.

GSA procedures call for it to use the data it receives in the agencies' annual reports, including the agencies' recommendations to continue or terminate the committees, in conducting the comprehensive annual review and in preparing the President's annual report.

President's Annual Reports to Congress

The President is required to report annually to Congress on the activities, status, and changes in the composition of advisory committees. The annual reports are due to Congress by December 31 for each preceding fiscal year. GSA prepares the annual reports for the President with information provided in agencies' annual reports on each advisory committee that existed during the fiscal year.

Follow-Up Reports to Congress on Presidential Advisory Committee Recommendations

FACA requires the President, or his delegate, to report to Congress within 1 year on his proposals for action or reasons for inaction on recommendations made by a presidential advisory committee to the President. According to FACA's legislative history, these follow-up reports would help justify the investments in the advisory committees and provide

accountability to the public and Congress that the recommendations are being addressed.

According to GSA regulations, the agency providing support to the advisory committee is responsible for preparing and transmitting the follow-up report to Congress. However, the regulations also state that the Secretariat is responsible for ensuring that the follow-up reports are prepared by the agency supporting the presidential committee and may solicit OMB and other appropriate organizations for help, if needed to ensure compliance.

Recent Proposal to Amend FACA

A focus of today's hearing is the proposal to amend FACA to specify that the act does not apply to committees that are created by an entity other than an agency or federal official and are not subject to actual management and control by federal officials. This proposal is in response to a recent decision by the U.S. Court of Appeals for the District of Columbia that FACA applied to panels of the National Academy of Sciences (NAS).

This development has not been the focus of our work and we have not assessed the merits of the issue. I would like to make two observations, however. First, the extent to which these entities are included under FACA will likely have an impact on GSA in its oversight capacity. Under the Court of Appeals decision, according to OMB, more than 450 NAS panels could potentially become subject to FACA and therefore fall under GSA purview. The inclusion of NAS panels, and perhaps other similarly situated entities used by other organizations, could pose resource implications for GSA whose staff of 8 employees is currently responsible for overseeing about 1,000 advisory committees.

Second, the inclusion of additional entities under FACA in accordance with the Court of Appeals decision might also affect the federal agencies that sponsor the panels (albeit somewhat indirectly in the instance of the NAS.) FACA requires that advisory committees be managed and controlled by a federal agency. This has not been the case for those committees that were made subject to FACA pursuant to the Court of Appeals decision. Management and control generally means that meetings are to be chaired or attended by an agency employee and that certain meeting-related decisions—such as whether a particular meeting should be open or closed to the public—are to be made by the agency. Agencies also provide administrative support to their committees. It is unclear whether agencies would be required to provide the same active participation in the activities of NAS-type panels. If they did, certain costs would have be incurred. While

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we do not know what those costs might be, we know from our analysis of GSA records that the average annual cost for federal staff involved in the 1,000 advisory committees in existence during fiscal year 1996 was about \$75,000 per committee. We are not suggesting that the possibility of additional costs is a reason for deciding whether or not to include certain entities under FACA. But, we do believe it is important for the Congress to be aware of such costs as it deliberates on the matter.

Mr. Chairman, this concludes my statement. I will be pleased to answer any questions you or any Members of the Subcommittee may have.

Distribution of Federal Advisory Committees by Establishment Authority During Fiscal Years 1993-1996

| Fiscal Year | Establishment authority | | | |
|-------------|--------------------------|------------------------|-----------------------------|------------------------|
| | Discretionary committees | | Nondiscretionary committees | |
| | Agency authority | Authorized by Congress | Mandated by Congress | Presidential directive |
| 1993 | 401 | 432 | 444 | 28 |
| 1994 | 316 | 423 | 429 | 27 |
| 1995 | 325 | 318 | 438 | 29 |
| 1996 | 286 | 244 | 438 | 32 |

Source: Annual Reports of the President on Federal Advisory Committees.

Federal Advisory Committee Statistics During Fiscal Years 1993-1996

| Fiscal year | Total number of committees | Number of discretionary committees | Total costs in millions (nominal dollars) | Number of members |
|--------------------|---------------------------------------|---|--|------------------------------|
| 1993 | 1,305 | 833 | \$143.9 | 28,317 |
| 1994 | 1,195 | 739 | 133.4 | 30,446 |
| 1995 | 1,110 | 643 | 157.0 | 29,766 |
| 1996 | 1,000 | 530 | 148.5 | 29,511 |

Source: Annual Reports of the President on Federal Advisory Committees.

Types of Federal Advisory Committee Meetings During Fiscal Years 1993-1996

| Fiscal year | Type of meetings | | | Total |
|-------------|------------------|--------|------------------|-------|
| | Open | Closed | Partially closed | |
| 1993 | 2,162 | 1,210 | 1,015 | 4,387 |
| 1994 | 1,826 | 1,502 | 781 | 4,109 |
| 1995 | 2,443 | 2,233 | 503 | 5,179 |
| 1996 | 2,208 | 2,379 | 421 | 5,008 |

Source: Annual Reports of the President on Federal Advisory Committees.

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